Trend Construction Corporation and General Electric Corporation, Individually and as Joint Employers *and* United Brotherhood of Carpenters & Joiners of America, Local Union No. 1224 & KAW Valley District Council, AFL-CIO. Case 17-CA-9738

August 11, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On January 12, 1982, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, the Respondents and the Charging Party filed exceptions and supporting briefs, and the Respondents filed a brief in opposition to the Charging Party's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, Trend Construction Corporation, Burlington, Kansas, and General Electric Corporation, St. Louis, Missouri, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On February 3-6, 1981, I conducted a hearing in Emporia, Kansas, to try issues raised by a complaint issued on July 25, 1980,[1] as amended on January 6, 1981, based on a charge and an amended charge filed by United Brotherhood of Carpenters & Joiners of America, Local Union No. 1224 (herein called Local 1224), and KAW Valley District Council, AFL-CIO (herein called the Council and jointly referred to as the Unions) on June 13 and July 18.

In 1979 General Electric Corporation (GE) contracted with Kansas Gas & Electric Corporation (KGC) and Kansas City Power & Light Company (KCPL), referred to jointly hereafter as the utilities, to furnish and install steam turbine and associated equipment for a nuclear power generating station near New Strawn, Kansas, known as the Wolf Creek Power Plant project. GE contracted with Trend Construction Corporation to furnish necessary labor, including millwrights. Hire of millwrights and their foremen and work on the contract commenced in November 1979. On April 15, the Unions petitioned for certification as the exclusive collective-bargaining representative of the millwrights and their foremen, supporting the petition with a number of cards previously secured from a number of the millwrights and foremen authorizing the Unions to act as their representative for collective-bargaining purposes (Case 17-RC-9024). On May 6, a hearing was conducted on the petition. On May 11, 13 millwrights and 1 millwright foreman were hired, doubling the number employed on the job. On May 19, an order was issued in the representation case directing a June 19 election among those millwrights and foremen employed during the payroll period preceding May 19. On May 27, counsel for the Employers submitted a list of eligible voters, including those hired on May 11. On June 13, the Unions filed their original charge in this case. On June 16, an order was issued in the representation case indefinitely postponing the election due to the pendency of the charge. On June 19 and 23 and July 3 all but five millwrights and one foreman were laid off.

The complaint alleges GE and Trend were joint employers of the millwrights and their foremen hired to perform the GE contract; that they constituted an appropriate unit for collective-bargaining purposes; that, at the time the petition was filed, the Unions represented a majority of the employees within the unit; that the Employers doubled the size of the unit on May 11 to defeat the effort of those millwrights and foremen hired prior to that date to secure representation by the Unions; that the Employers offered the May hires special benefits in order to "pack" the unit; that, when their effort to pack the unit was thwarted by the election postponement, the Employers sought to discourage any further effort by the millwrights and foremen hired prior to May to secure union representation by laying off a substantial number of them; and that the Employers violated Section 8(a)(1) of the National Labor Relations Act, as amended, by the alleged May special benefits' offer and hire and Section 8(a)(1) and (3) of the Act by the layoffs noted above. The General Counsel and the Unions also seek as part of the remedy for the alleged unfair labor practices an order directing the Employers to bargain with the Unions as the exclusive collective-bargaining representative of the unit employees.

Trend and GE denied that they were joint employers; denied the unit sought by the Unions was appropriate for collective-bargaining purposes; denied the Unions achieved majority representative status within the unit; denied they recruited the May hires to pack the unit and thereby defeat the representation effort; denied the May hires were offered special benefits to induce them to accept employment; denied the layoffs were effected to discourage unit employees from seeking union represen-

[1] Read 1980 after all further date references omitting the year.

tation; denied they violated the Act; and they contend that, if a violation is found, a bargaining order is unwarranted.

The issues for determination are:

1. Whether GE and Trend were joint employers of the unit employees.
2. Whether the unit the Unions sought to represent was appropriate for collective-bargaining purposes.
3. Whether the Unions represented a majority of the employees within the unit.
4. Whether the Employers offered and paid special benefits to and hired a large number of employees in May to pack the unit and defeat the previously hired unit employees' effort to secure union representation.
5. Whether the layoffs of unit employees hired prior to May, following the postponement of the election, were effected to discourage unit employees from further attempts to secure union representation.
6. Whether GE, Trend, or both violated the Act.
7. If so, whether a bargaining order is warranted.

The parties appeared by counsel at the hearing and were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file briefs. Briefs were submitted by the General Counsel and by the Employers.

Based on my review of the entire record, perusal of the briefs, and research, I enter the following:

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that at all times material GE and Trend were employers engaged in commerce in a business affecting commerce and the Unions were labor organizations within the meaning of Section 2 of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

The utilities retained Daniel Corporation as the general contractor on the project and GE as a special contractor to install its manufactured products.

Daniel performed a substantial portion of the work with its own employees, including millwrights, and subcontracted out other portions of the work for performance by specialists with their employees. At peak times, there were 3,500 persons working on the project. None of the Daniel employees were union-represented.

Along with the provisions setting out the work to be performed, the equipment to be supplied, and the compensation to be paid therefor, the contract between utilities and GE provided:

> Contractor agrees that all labor employed by it, its agents or assigns, for work on the Project, shall be in harmony with and compatible with all other labor being used by the owner or other contractors . . . . Contractor agrees that if any portion of the work covered hereby is further subcontracted, such lower-tier subcontractor shall be bound by and observe the provisions of this Section to the same extent as herein required of Contractor.

Before work started on the project, GE assigned Gary Boercker, whose offices were in St. Louis, Missouri, as its project manager. Initially (in November 1979), GE assigned John Warren as acting site manager and lead technical director at the jobsite. Warren assumed those duties at the jobsite on November 5, 1979. Boercker advised Warren that he anticipated that no more than 15 millwrights and foremen would be needed to complete the job. On March 4, GE assigned Steve Nielson as site manager at the jobsite; Warren continued as lead technical director. On April 16, Warren resigned, and was replaced by Richard Todd. Trend initially (on November 5, 1979) assigned Jesse McManners as its job superintendent at the jobsite. McManners was replaced by Grant Burditt in January.[2]

Between November 1979 and the time he left GE's employ, Warren recruited all the millwrights and millwright foremen employed on the GE contract. During McManners' tenure at the jobsite, Warren also processed the hire-in of the millwrights and millwright foremen he recruited.

On learning from Daniel's millwrights they were receiving a higher rate of pay than the rate he offered the millwrights he recruited for the job, Warren requested and received authorization from higher GE officials to pay the higher rate (after GE secured authorization from the utilities to pay the higher rate). During Warren's tenure at the jobsite, he oversaw the planning and progress of the millwrights' work and issued instructions therefor, normally through Trend's superintendent and/or the millwright foremen. Todd followed the same format on succeeding Warren.

On April 15 the Unions filed a petition for certification as the exclusive collective-bargaining representative of the millwrights and their foremen based on authorization cards previously secured. At the time the petition was filed, there were 13 employees within the unit sought.[3] Trend was notified of the filing within a few days after it was filed and notified GE of the filing shortly thereafter.

The cards were signed by 9 of the 13[4] on various dates prior to April 15; most of them were signed in the course of two meetings among the millwrights, the foremen, and representatives of the Local and the Council, at the Local's office on March 17 and on either April 7 or 8. Both of the Armstrongs, Johnson, F. J. Michael, and Shields were members of local unions affiliated with the Brotherhood prior to signing, as was Warren.

The Employers contend the cards signed by D. Armstrong, D. Berry, M. Berry, Johnson, F. J. Michael, A.

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[2] I find at times material Boercker, Warren, Nielson, and Todd were supervisors and agents of GE acting on its behalf and McManners and Burditt were supervisors and agents of Trend acting on its behalf, within the meaning of Sec. 2 of the Act.

[3] Alan Armstrong, Delbert Armstrong, Dean Berry, Mark Berry, Arnold Chambers, Larry Clark, Adron Johnson, Galen Kraft, Buddy Jack McDowell, Franklin J. Michael, Alvin Parks, Van Parks, and John Shields. Kraft and A. Parks were foremen; the rest were journeymen.

[4] A. Armstrong, D. Armstrong, D. Berry, M. Berry, Johnson, F. J. Michael, A. Parks, V. Parks, and Shields.

Parks, V. Parks, and Shields are invalid because Shields testified that, at the April meeting, a representative of the Unions (Morris Eastland) stated the only purpose for signing the cards was to obtain an election and the eight millwrights just named attended that meeting and heard that statement.

The remark in question was elicited from Shields in cross-examination, in response to a leading question. None of the other millwrights corroborated his testimony. To the contrary D. Armstrong, who testified he was a member of a Carpenters union affiliate when he attended the April meeting and signed his cards, further testified that he read the card before signing it and was told that securing an election was only one of the purposes for which the Unions sought the cards; D. Berry testified he and his son M. Berry signed their cards at the *March 17* meeting, and that he read the card before signing it; Johnson testified he was a longtime member of a Carpenters union affiliate, that he signed his card on January 22 at the request of his local union representative when he was assured of employment on the job and contacted his local union representative (Local 1529) for clearance; F. J. Michael testified he also was a longstanding member of a Carpenters union affiliate, that he signed his card at the *March 17* meeting, and read it before signing it; and neither A. nor V. Parks, though both testified, corroborated Shields' testimony. In view of the foregoing, and particularly on the basis of D. Armstrong's testimony, which I credit, I find Eastland, an experienced representative, did not state at the April meeting the only purpose for which the Unions sought the cards was to secure an election, that Shields was mistaken in so testifying, and that, in any event, none of the other eight signatories signed their cards under that impression.

On April 16, Shields was discharged by Warren, at Nielson's direction. At or about the same time, Kraft resigned; and D. Armstrong was promoted to foreman, replacing Kraft. On April 21, M. Berry resigned. On April 21, Flint Boyle, Steve Boyle, Dan Lacy, and Neal McDowell were locally recruited and hired as millwrights.

On May 6 the Region conducted a hearing on the Unions' representation petition. The sole issue was whether or not the millwright foremen should be included in the unit with the journeymen (the Employers' counsel contended the foremen should be excluded and the Unions contended they should be included).

On May 11, James Charping was hired as a foreman and Tommy Allen, Layton Abercrombie, Wayne Berrong, John Charping, Clyde Davis, Luther Davis, Ray Grindstaff, Wallace Gunter, Ralph Lanier, Brown Mahon, Marvin Poteat, Billy Smith, and James Thrasher were hired as millwrights.

The 14 new hires were not recruited locally; all came from South Carolina.[5]

The 14 were recruited by George Shepherd, Trend's director of human resources,[6] at Boercker's May 1 and 5 requests.[7] The 14 were recruited at the recommendation of Daniel's personnel representative at the jobsite (Daniel previously employed James Charping as a millwright foreman).

Prior to proceeding to the jobsite, James Charping secured agreement from Shepherd to reimburse those of the 14 who traveled to the jobsite in their own autos for fuel expenses; following their arrival, Shepherd authorized the disbursement of between $700–$800 for that purpose, following the production of receipts therefor.[8]

On their first regular workday, Monday, May 12, James Charping and a crew consisting of Allen, Berrong, John Charping, L. Davis, Grindstaff, Gunter, Lanier, Smith, and Thrasher were assigned to clean parts in and near the storage building. On the same day, Todd approached B. McDowell, appointed him foreman, and assigned to him a four-man crew consisting of Abercrombie, C. Davis, Mahon, and Poteat, for work at the turbine building. The other 11 millwrights (A. Armstrong, D. Berry, F. Boyle, S. Boyle, Chambers, Clark, Johnson, Lacy, N. McDowell, F. J. Michael, and V. Parks) continued their installation work at the turbine building under Foremen A. Parks and D. Armstrong.

When Todd promoted him and assigned him a crew, McDowell asked why all the new men were hired. Todd replied he did not know, he had not been told why they were hired, just instructed to put them to work. Todd assigned the McDowell crew, as its first job, the leveling of the sole plate for the front standard, to be followed by preparation for, and installation of, boiler feed pumps. Leveling the standard required the use of micrometers and precision levels, plus proper placement of shims. On starting work, McDowell found neither Mahon nor D. Davis knew how to read a micrometer or utilize a precision level, both basic tools used by millwrights, and that Abercrombie and Poteat were hesitant about their micrometer readings and unfamiliar with the level. He assigned C. Davis to cleaning bolts, was unable to find much work Mahon could perform, and attempted to carry on the leveling job with Abercrombie and Poteat. When Todd complained to him about Mahon's wandering around the jobsite and Davis' limited work performance, McDowell told Todd of Mahon's and Davis' limited capacities, that he was not going to "ride herd" on Mahon, was limited in the work he had available that Davis could perform, and suggested Mahon be terminated. Todd replied he could not terminate any of the new hires and took no action concerning either Mahon or C. Davis. After trying to work with his crew for 2 weeks, McDowell informed Todd that they were incapable of performing the assigned work. Todd agreed, transferred the four to James Charping's cleaning crew, and assigned four men from that crew—Berrong, Grindstaff, Smith, and Thrasher—to work with McDowell. McDowell immediately learned neither Smith nor Thrasher was famil-

[5] Despite 25 responses by May 8 to help-wanted ads for millwrights placed by Trend in Kansas City, Wichita, Tulsa, and Oklahoma City newspapers (none of the 25 were contacted).

[6] I find at all pertinent times Shepherd was a supervisor and agent of Trend acting on its behalf within the meaning of Sec. 2 of the Act.

[7] The latter request increased the number requested from 1 foreman and 6 millwrights to 1 foreman and 13 millwrights.

[8] A special payroll was prepared to pay the 14 new hires for Sunday, May 11, the day they reported at the jobsite and were processed, inasmuch as the weekly payroll ended on consecutive Sundays and the regular payroll for the week ending Sunday, May 11, had been completed and sent in.

iar with precision tools; they neither could read a micrometer nor use a precision level, and were unfamiliar with the process for setting shims. Working with Berrong and Grindstaff, he was able to level the sole plate (after showing them how), with Grindstaff able to do the work without help and Berrong requiring assistance to complete the work. When he went on to the work of preparing for the installation of the boiler feed pumps, however, he experienced great difficulty due to the inexperience of the crew and informed Todd that his second crew was incapable of performing the work. Todd transferred the second crew back to James Charping's cleaning crew and assigned 1 of the 11 millwrights uniformly employed on installation at the turbine building to work with McDowell, despite McDowell's request to resume journeyman rather then foreman status.

On May 19, the Regional Director issued a Decision and Direction of Election in Case 17-RC-9024 finding appropriate for collective-bargaining purposes the unit sought by the Unions; namely:

> All full-time and regular part-time millwrights and millwright foremen employed by the Employer at the Wolf Creek Power Plant jobsite in New Strawn, Kansas, Excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

The Regional Director included the foremen in the unit on the basis of findings: (1) the foremen received a fixed differential over the journeyman rate (75 cents per hour), worked the same hours, shared the same fringe benefits and working conditions, and were hired to work for the same period as the journeymen (the duration of the job); (2) the foremen neither possessed nor exercised the power to hire, fire, discipline, or assign overtime, and both the foremen and the journeymen effectively recommended new hires for employment; and (3) the foremen exercised routine responsibilities not requiring independent judgment in assigning and directing the work of their crews.

In his decision, the Regional Director directed an election within the unit on June 19, specifying those employees within the unit whose names appeared on the payroll for the pay period May 12-18 would be eligible to vote. Counsel for the Employers promptly submitted a voter eligibility list which included the names of the 14 May 11 hires.

On May 30, Boercker directed Trend to hire four more millwrights. On June 2, John Bennett, Calvin Markel, Franklin W. Michael, and William Tabor were hired.

Following the issuance of the Regional Director's May 19 decision, Trend conducted a vigorous campaign to persuade the unit employees to vote against representation by the Unions.

On June 13, the Unions filed the charge which led to this proceeding. On June 16, the Regional Director issued an order in Case 17-RC-9024 postponing the scheduled June 19 election for an indefinite period, due to the pendency of the charge.

Between June 19 and July 3, John Charping and S. Boyle quit. On June 19, 11 junior millwrights within the unit were laid off (Abercrombie, Allen, Bennett, C. Davis, Grindstaff, Mahon, Markel, F. W. Michael, Smith, Tabor, and Thrasher).

On June 26, the three junior foremen (D. Armstrong, James Charping, and J. McDowell) and eight junior journeymen (Berrong, F. Boyle, L. Davis, Gunter, Lanier, Lacy, N. McDowell, and Poteat) were laid off. On July 3, two junior journeymen (Clark and Johnson) were laid off. The unit was thereby reduced to the senior foreman (A. Parks) and the five senior journeymen (A. Armstrong, D. Berry, Chambers, F. J. Michael, and V. Parks).

Prior to the time James Charping and his recruits began work at the jobsite, Warren scheduled and accomplished the work of cleaning all the low-pressure shells by assigning the regular crew to cleaning operations whenever there was slack or an interruption in work at the turbine building. Warren scheduled the cleaning of the rotors, low-pressure shells, and diaphragms for October, to ready them in time prior to their installation.[9] During the time Charping's cleaning crew worked at the jobsite (between May 12 and June 26, when Charping and the last of his recruits were laid off), they cleaned four rotors, two high-pressure shells, and three diaphragm halves. According to Todd, it took three to four members of Charping's crew 3 weeks to clean the three diaphragm halves; by way of contrast, in the fall of 1980, two of the millwrights employed prior to the employ of Charping's crew took 12 hours to clean one diaphragm half. During the time Charping's crew was assigned to cleaning parts, members of the crew were observed reclining and otherwise not working during regular working hours.[10]

For some time prior to the layoffs, Daniel was having trouble performing a portion of the work at the turbine building—installing supports for the moisture separator reheaters—which had to be completed before the unit millwrights could perform the next stage of GE's work at the turbine building. Boercker was aware of the delay in April and knew Daniel not only missed the target completion date for the work in question—May 15—it was not going to have the work completed by the end of June, and not for an indefinite period thereafter. It is therefore undisputed a reduction in the anticipated workload of the unit occurred, commencing approximately May 15, and continued through August (Daniel completed the work in question in late August).

On July 18 the Unions filed an amended charge alleging the seven members of the original crew (the crew as it existed prior to the May 11 hires) who were laid off on June 26 and July 2 (D. Armstrong, F. Boyle, Clark, Johnson, Lacy, B. McDowell, and N. McDowell) were laid off to discourage any further effort on their part and their fellow unit employees to secure union representation.

[9] Most of the parts cleaned by Charping's crew still had not been installed at the time of the hearing.

[10] I credit Van Parks' testimony to that effect.

The complaint, incorporating the amended charge, issued on July 25.

On September 18 reinstatement was offered to the seven employees named in the complaint as those whose layoff was discriminatory. Four of the seven, including B. McDowell, accepted the offer.[11]

Following his recall, B. McDowell asked Todd if there would be another layoff. Todd replied he did not think so, though KGE threatened to pull GE's contract and bring in another contractor if the job went union, since KGE put the job out for bid on an open-shop basis.

B. *Analysis and Conclusions*

1. The joint employer issue

It is the contention of the Employers that Trend was the sole employer of the unit employees; the issue is whether GE was also their employer.

I have entered findings that supervisors and agents of GE:

1. Hired unit employees.
2. Changed their rate of pay.
3. Discharged a unit employee.
4. Assigned and directed unit employees' work.
5. Determined the number of unit employees on the job.

GE contends the above factors fail to establish it was a joint employer of the unit employees because GE and Trend are separate corporations, they are separately owned and operated, their operations are not interrelated, and they do not have common management or centralized control of labor relations.

The findings recited above establish the contrary; i.e., while it is true they are separately owned corporations, GE and Trend's operations were interrelated; GE's representatives exercised common control over labor relations *vis-a-vis* the unit employees; and GE representatives participated in hiring, firing, layoff, discipline, and work decisions, as well as determination of the unit employees' wage rates and working conditions.

I find, on the basis of the foregoing, GE and Trend were joint employers of the unit employees at times pertinent.[12]

2. The unit and majority representation issues

The Employers do not contest the Regional Director's May 19 decision that a unit consisting of all the millwright foremen and millwrights employed on the GE contract at the jobsite, the unit sought by the Unions, was appropriate for collective-bargaining purposes within the meaning of Section 9 of the Act, and I so find and conclude.

I have entered findings that previous to April 15, when the Unions submitted their petition for certification as the collective-bargaining representative of the unit employees, they secured cards from 9 of the 13 employees within the unit, a clear majority (even discounting the Shields' card) authorizing the Union to represent them for collective-bargaining purposes. I find due to that authorization on April 15 the Unions represented a majority of the unit employees.

By April 21, however, the unit composition changed; Foreman Kraft quit and Shields was discharged on April 17; on April 21, M. Berry quit and F. Boyle, S. Boyle, Lacy, and N. McDowell were hired. As a result, on April 21 the unit increased by 1 (to 14) and the number of card signers within the unit decreased to 7.

From the above, it is clear that on and after April 21, *and prior to the commission of any of the unfair labor practices alleged in the complaint*, the Unions ceased to represent a majority of the employees within the unit, and I so find.

3. The "packing" and inducement issues

On April 15, the unit consisted of 13 employees; went down to 11 on April 17; up to 14 on April 21; jumped to 28 on May 11; increased to 32 on June 2; went down to 6 on July 3; increased to 10 in September; went down to 8 in December; and stayed at that level through January. In early May, the 14 May 11 hires were promised reimbursement for their travel expenses to induce their acceptance of employment, and received payment therefor later.

During this same time period, the Unions filed their petition on April 15; between April 17 and 22 Trend and GE were made aware of the petition; on May 6 the Region held a hearing on the issue of whether the foremen should be included within the unit; on May 19 the Region issued its decision including the foremen within the unit and directing an election among those employees within the unit on the payroll for the week ending May 18; and on June 13 the Region indefinitely postponed an election scheduled for June 19.

It is readily apparent the May offer and payment of a special benefit (travel expenses) and the hire of double the number then in the unit coincided with the Employers' awareness of the petition filing and the Employers' avoidance of an immediate election by raising the issue of whether the foremen should be included within the unit; it is also obvious the offer, payment, hire, and election delay enable the new hires' names to be included in the list of eligible voters; and it is equally evident the inflated work force was reduced to a level consonant with the work requirements when the attempt to add the South Carolineans to the voting group was thwarted by the election postponement.

It is also clear the 28-man crew in May—increased to 32 in June—far exceeded the work requirement at that time. The number within the unit prior to its sudden expansion in anticipation of the election and the number within the unit subsequent to the election cancellation

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[11] McDowell accepted reinstatement as a journeyman.

[12] *Sun-Maid Growers of California* v. *N.L.R.B.*, 618 F.2d 56 (9th Cir. 1980); *U.S. Pipe & Foundry Company and Winfrey Enterprises, Inc.*, 247 NLRB 139 (1980); *Pulitzer Publishing Co.*, 242 NLRB 35 (1979), affd. 618 F.2d 1275 (8th Cir. 1980); *Transportation Lease Service, Inc. and Allied Stores of Penn-Ohio, d/b/a Pomeroy's Inc.*, 232 NLRB 95 (1977); *Manpower, Inc. and Avis Rent-A-Car System, Inc.*, 226 NLRB 1 (1976); *Pilot Freight Carriers, Inc. and BBR of Florida, Inc.*, 223 NLRB 286 (1976); *Manpower, Inc. of Shelby County and Armour Grocery Products Co., Division of Armour and Company*, 164 NLRB 287 (1967); *The Greyhound Corporation (Southern Greyhound Lines Division) and Floors, Inc. of Florida*, 153 NLRB 1488 (1965).

lend substance to Warren's testimony it was never anticipated the job would require more than 15 men to perform; and Warren's ability, with a crew of less than 15, to schedule and accomplish cleaning of parts scheduled for installation in ample time prior to the need therefor, gives addition to that estimate. The fact the May hires were offered employment and assured of reimbursement for travel expense to the jobsite without screening concerning their qualifications and neither terminated nor disciplined when it was determined half the limited number of the May hires assigned to work at the turbine building were unqualified for millwright work and shirking the performance of any job duties; that only a few of the May hires were assigned to perform skilled work at the turbine building but rather were assigned the unskilled work of cleaning parts; that Boercker's early May demands[13] that Trend double the millwright force were phrased in urgent terms, despite Boercker's awareness Daniel was behind schedule in completing the moisture separator work; that Todd indicated he did not know when the May hires arrived and why they had been hired; that most of them were put to work on nonurgent work (cleaning parts); that the applications of 25 locally available millwrights were ignored; and that the unit was promptly reduced to a number sufficient to perform the work available when the election was postponed for an indefinite period also supports the conclusion the May hires were unneeded, and hired solely to influence the election.

The Employers contend the factors recited above do not demonstrate they doubled the unit in May to influence the anticipated election in the absence of proof of union animus on their part. That contention is without merit, since Todd's October comments and Trend's efforts to influence the unit employees against the Unions establish, in the case of the former, the meaning of the ambiguous language of the contract between the utilities quoted heretofore—that the utilities bid the job as open shop and expected GE and Daniel to keep it an open-shop job in their subcontracting arrangements—and, in the case of the latter, its preelection propaganda showed its union animus.

I therefore find and conclude the Employers offered and paid the May hires a special benefit to accept employment within the unit, and employed them, in order to double the unit and thwart the efforts of its employees who were supporters of the Unions to secure representation by the Unions, thereby violating Section 8(a)(1) of the Act.[14]

4. The layoff issue

Between June 19 and July 3, the "packed" unit of 32 employees was reduced to 6, due to 2 quits and 24 layoffs. The layoffs were accomplished by seniority; i.e., the last hires were the first laid off,[15] which meant all the April 21, May 11, and June 2 hires were laid off, plus 2 of the pre-April 15 journeymen hires and 3 foremen (including the 2 whose hiring dates predated April 15).

Two factors precipitated the layoffs—the futility of retaining the unnecessary hires of May 11 and June 2 in view of the indefinitely postponed election and the slowdown in the work required which occurred when Daniel failed to timely complete the moisture separator reheater work.

In view of the foregoing, I find and conclude that the General Counsel and the Unions failed to demonstrate the layoffs of the two foremen with pre-April 15 hiring dates, three of the four April 21 hires (one quit), and the two pre-April 15 journeymen hires were accomplished to inhibit the unit employees' exercise of their rights under Section 7 of the Act.[16]

I therfore find and conclude that the Employers did not violate Section 8(a)(1) and (3) of the Act by laying off D. Armstrong, F. Boyle, Clark, Johnson, Lacy, B. McDowell, and N. McDowell on June 26 and July 3.

5. The bargaining order issue

Inasmuch as I have found the Unions ceased to represent a majority of the unit employees on April 21 and their loss of majority representative status at that time cannot be attributed to the Employers, I find and conclude no basis exists for the issuance of a bargaining order.[17]

III. THE REMEDY

Having found the Employers engaged in an unfair labor practice in violation of Section 8(a)(1) of the Act. I shall recommend that the Employers be directed to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act. Having found GE and Trend did not violate Section 8(a)(1) and (3) of the Act by its June 26 and July 3 layoffs, I shall recommend those portions of the complaint so alleging be dismissed.

CONCLUSIONS OF LAW

1. At times material GE and Trend were employers engaged in commerce in a business affecting commerce

[13] I do not credit Boercker's testimony he decided in mid-April to double the unit; his testimony to that effect was uncorroborated; the *documentary records* establish he made his urgent requests for additional personnel in early May (after his receipt of notice of the petition filing) and his alleged projection of increased work demands for the unit is belied by his awareness in April of Daniel's difficulties with the moisture separator work and the fact the new hires were not assigned to installation work but to cleaning.

[14] *Maxi Mart*, 246 NLRB 115 (1979); *C. Markus Hardware, Inc.*, 243 NLRB 903 (1979).

[15] *Classification* seniority was applied; i.e., the 3 junior foremen and the 27 junior journeymen were laid off, rather than permitting the 2 laid-off foremen with sufficient total service to retain employment (D. Armstrong and B. McDowell) to exercise their overall seniority within the unit to retain employment.

[16] I further note only three of the seven employees who were alleged to have been laid off because of their union activities (D. Armstrong, Clark, and Johnson) signed union authorization cards prior to their layoff and five of the six employees who retained their employment after the layoffs (A. Armstrong, D. Berry, F. J. Michael, A. Parks, and V. Parks) signed union authorization cards prior to the layoffs.

[17] *Struthers Dunn, Inc.*, 237 NLRB 892 (1978) (see also *N.L.R.B.* v. *Struthers Dunn, Inc.*, 574 F.2d 796 (3d Cir. 1978); *Kawasaki Motors*, 257 NLRB 488 (1981); *Sumco Manufacturing Co., Inc.*, 251 NLRB 427 (1980); *F.W.I.L. Lundy Bros. Restaurant, Inc.*, 248 NLRB 415 (1980); *Miami Springs Properties, Inc. and James H. Kinley and Associates, Joint Employers*, 245 NLRB 278 (1979); *Woonsocket Health Center*, 245 NLRB 652 (1979).

and the Unions were labor organizations within the meaning of Section 2 of the Act.

2. At times material GE and Trend were joint employers of all full-time and regular part-time millwrights and millwright foremen employed by them at the Wolf Creek Power Plant jobsite near New Strawn, Kansas, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

3. The above-specified unit at material times was appropriate for collective-bargaining purposes within the meaning of Section 9 of the Act.

4. On April 15 the Unions represented a majority of the Joint Employers' employees with the unit and ceased to represent a majority of the unit employees on April 21.

5. The Joint Employers violated Section 8(a)(1) of the Act by a May offer and payment of travel expenses to secure the employment of a large number of unneeded millwrights, and by their hire, since the offer, payment and hire were effected to thwart the efforts of their previously hired unit employees to secure union representation.

6. The Joint Employers did not violate Section 8(a)(1) and (3) of the Act by their June 26 and July 3 layoffs of unit employees.

7. The aforesaid unfair labor practice affected commerce as defined in the Act.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I recommend the issuance of the following recommended:

ORDER[18]

The Respondents, Trend Construction Corporation, Burlington, Kansas, and General Electric Corporation, St. Louis, Missouri, their officers, agents, successors, and assigns, shall:

1. Cease and desist from interfering with their employees' Section 7 rights by offering and paying special benefits to secure the hire of unneeded employees, and hiring unneeded employees, to inflate the following described unit and prevent a fair election among:

> All full-time and regular part-time millwrights and millwright foremen employed by GE and Trend at their Wolf Creek Power Plant jobsite near New Strawn, Kansas, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at their Wolf Creek jobsite copies of the attached notice marked "Appendix."[19] Copies of said notice, on forms provided by the Regional Director for Region 17, after being signed by their representatives, shall be posted by GE and Trend immediately upon receipt thereof and maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by other material.

(b) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps the Respondents have taken to comply herewith.

IT IS FURTHER RECOMMENDED that those portions of the complaint alleging GE and Trend violated Section 8(a)(1) and (3) of the Act by their June 26 and July 3 layoffs be, dismissed.

[18] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[19] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing, the above agency found we violated the National Labor Relations Act by offering and paying travel expenses to, and hiring a large number of unneeded millwrights for the purpose of preventing our previously hired millwrights from securing representation by, United Brotherhood of Carpenters & Joiners of America, Local Union No. 1224 & KAW Valley District Council, AFL-CIO, and ordered us to post this notice advising you in the future:

> WE WILL NOT offer and pay special benefits to, and hire, unneeded employees within the unit set out below, for the purpose of preventing our normal complement of employees within that unit from securing a fair election and representation by the Unions named above. The unit consists of:
>
> > All full-time and regular part-time millwrights and millwright foremen employed by us at the Wolf Creek Power Plant jobsite near New Strawn, Kansas, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.
>
> TREND CONSTRUCTION CORPORATION AND GENERAL ELECTRIC CORPORATION, INDIVIDUALLY AND AS JOINT EMPLOYERS